



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Janet T. Mills
GOVERNOR

Bruce A. Van Note
COMMISSIONER

April 15, 2021

**Testimony of Nina Fisher
Maine Department of Transportation
Before the Joint Standing Committee on Transportation**

**Presenting LD 1133
*An Act To Amend Transportation Laws***

Senator Diamond, Representative Martin, and members of the Joint Standing Committee on Transportation, I am Nina Fisher, Deputy Commissioner for the Maine Department of Transportation. I am before you today to present LD 1133, *An Act To Amend Transportation Laws*.

LD 1133 represents MaineDOT's omnibus bill. It proposes changes to sections in 23, 29 and 30-A of the Maine Revised Statutes. To simplify these changes, I will address each section of the bill individually.

Sec. 1. 23 MRSA §73, sub-§7

LD 1133 proposes changes to Maine's Highway Corridor Priority (HCP) level classification system. These changes reflect federal requirements, system needs, customer expectations, and funding realities. The HCP and customer service levels (CSL) were established in 2011 to set improvement expectations while continuing to provide customers a safe and reliable transportation system. Ten years have passed since the creation of the HCP and CSL levels, and much has changed both at the federal level and within the state; revisions to these priorities, service levels, and goals are in order. This HCP realignment will result in more than 1,000 additional miles of highway being managed in the light capital paving program, make HCP 1 synonymous with the National Highway System to be measured with federal performance measures, and apply minimum condition standards to HCP 2 and 3 based on the percentage of poor roads.

Sec. 2. 23 MRSA § 75 & Sec. 4. 23 MRSA § 7107

LD 1133 establishes a Rail Use Advisory Council for the purpose of reviewing potential uses for state-owned rail corridors in Maine, including rail use and non-rail recreational use. As those who served on this committee last session will remember, Governor Mills submitted LD 2124, *An Act To*

Create the Rail Use Advisory Council Process. That bill passed in committee but failed to be enacted by the entire legislature prior to adjournment due to the COVID-19 pandemic.

This committee has historically received several “rail to trail” or “rail with trail” bills in past legislative sessions. Alternatively, and equally as important, this committee discusses legislation requesting the extension of rail service across Maine. Section 2 of LD 1133 would create a process by which stakeholders and entities with both trail and rail interests can come together to discuss the future of a rail corridor. The bill allows for a governmental entity, representing a community along a state-owned rail corridor, to petition the Commissioner of Transportation to establish a Rail Corridor Use Advisory Council. The purpose of this council is to facilitate discussion, gather information, and provide advice to the commissioner regarding future use of the rail corridor identified in the petition. These recommendations shall include the benefits and costs of potential uses of the rail corridor, including rail use and trail use, with the understanding that any non-rail use of the corridor is considered *interim in nature*. Rail corridors will continue to be preserved for future rail use.

The bill outlines the membership and meetings of the Rail Corridor Use Advisory Council. These members shall include individuals from MaineDOT; the Department of Agriculture, Conservation and Forestry; the Department of Economic and Community Development; other state agencies; a statewide or regional tourism organization; a chamber of commerce or regional economic development entity; an organization advocating for rail use or preservation; an organization advocating for recreational trail use; municipal officials; and a representative advocating for the interests of bicyclist or pedestrians needs. The bill requires the Commissioner of Transportation to designate a chair of the council and the council to hold a minimum of one public hearing. Within nine months of convening its first meeting, the council is required to submit a report to MaineDOT on its findings with a recommendation of use of the rail corridor.

Section 4 of the bill proposes changes to the Maine Rail Preservation Act. These changes allow for the Commissioner of Transportation, at his or her discretion, to submit legislation, based on the recommendation of the Rail Corridor Use Advisory Council to the Legislature’s Transportation Committee. Any legislation submitted would then be reviewed, discussed, and ultimately decided on by this committee.

MaineDOT believes that the creation of this council will add a layer of critical discussion prior to changes in rail corridor use requests reaching this committee. The creation of this council creates an opportunity for all interested parties to thoughtfully and thoroughly have their concerns and opinions concerning the future of a rail corridor heard and documented.

Sec. 3. 23 MRSA §157

This section of the bill pertains to the appeal process of a decision of the State Claims Commission. Statute currently states that “MaineDOT or any party or parties aggrieved by an award by the State Claims Commission may appeal to the Superior Court in the county where the land is situated within

30 days from the date of issuance of the commission award.” When MaineDOT acquires land through condemnation, we pay the landowner our view of just compensation based on a fair real estate appraisal. If a landowner chooses to appeal MaineDOT’s compensation, he or she does so by requesting a hearing at State Claims.

Current law states that when someone disagrees with a judgement from State Claims, that person can “appeal” to superior court. This, however, is not an appeal, it is a trial “de novo,” or a new trial. The superior court does not review how the State Claims Commission ruled or give deference to the commission. Instead, the party that files the appeal receives a new trial.

This process works if the landowner files the appeal because the landowner has the burden of proof under Maine law to show that he or she is entitled to more compensation than MaineDOT paid during condemnation. If the landowner appeals, under statute, he or she files a normal civil complaint as the plaintiff in superior court. The difficulty with this process arises when MaineDOT disputes an award from state claims and we want to utilize the appeal process. Current statute dictates that MaineDOT would have to file an appeal as the plaintiff. This is problematic as MaineDOT is not asking for anything and does not have the burden of proof.

LD 1133 clarifies this scenario by specifying that the landowner claiming damages through the appeal process be denominated plaintiff.

Sec. 5, 6. 29-A MRSA §101, sub-§ 63-C& 63-D

Sec. 7. 29-A MRSA §2053, sub-§3A

These sections of LD 1133 add definitions into statute for roundabouts, rotary intersections, and mini-roundabouts. In addition, this section would add roundabouts into the section of statute that discusses right of way, under the subsection that currently references both traffic circles and rotary intersections.

Adding these items into statute will further clarify roundabout and rotary intersection operation for users, by specifying that a vehicle may not travel beyond two exit points in the outside lane and that an operator shall obey all signage and stencil markings lawfully placed at a traffic circle, roundabout, or rotary. This change will give law enforcement the appropriate tools to enforce roundabout, rotary intersection, and traffic circle operations.

Thank you for your time. I would be happy to address any questions the committee might have.